

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY  D.C.

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THOMAS W. GOULD
CLERK, U.S. DISTRICT COURT
W/D OF TN, MEMPHIS

MICHAEL JOSEPH KIRKPATRICK,

Petitioner,

vs.

T.C. OUTLAW,

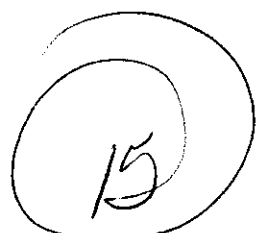
Respondent.

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No. 03-2802-M1/P

ORDER DENYING MOTION
AND
ORDER DENYING IRREGULAR MOTION

Petitioner Michael Joseph Kirkpatrick, Bureau of Prisons inmate registration number 20806-018, an inmate at the Federal Correctional Institution in Memphis ("FCI-Memphis"), filed a habeas petition pursuant to 28 U.S.C. § 2241 on October 28, 2003, along with a supporting memorandum. Kirkpatrick paid the habeas filing fee on December 9, 2003. The petition alleged that Kirkpatrick was denied the assistance of counsel on direct appeal. The Court issued an order on April 28, 2004 denying the petition and certifying that an appeal would not be taken in good faith. Judgment was entered on April 28, 2004. Kirkpatrick filed a motion for reconsideration on May 18, 2004, which the Court construed as a motion for relief from



judgment pursuant to Fed. R. Civ. P. 60(b) and, as so construed, denied the motion in an order issued on December 28, 2004.

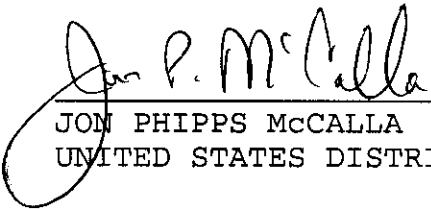
In the meantime, on December 16, 2004, Kirkpatrick filed a document, entitled "Application for Writ of Original Habeas Corpus." On January 19, 2005, Kirkpatrick filed a document, entitled "Final Motion for Reconsideration in Knowledge of the Wrong (and) Failure to Grant the Writ of Original Hebeas [sic] Corpus to Correct this Constitutional Wrong by the Pleadings Herewith." On January 21, 2005, the Clerk docketed a letter from Kirkpatrick to this judge presenting additional arguments in favor of his petition. On January 26, 2005, Kirkpatrick filed a document entitled "Motion to Clarify the Change[s] and Absent Entry[s]." The Court issued an order on August 11, 2005 denying petitioner's motions to amend and for reconsideration.

In the meantime, on May 10, 2005, Kirkpatrick filed a motion to dismiss this petition in order to permit him to file a new § 2241 petition. As the judgment dismissing this petition was entered on April 28, 2004,¹ this motion is DENIED as moot.

¹ Moreover, it appears that Kirkpatrick has another § 2241 petition pending in this district. See Kirkpatrick v. Pearson, No. 05-2629-Ma/An (W.D. Tenn. filed Aug. 26, 2005).

On August 23, 2005, the Clerk docketed a personal letter to this judge from Kirkpatrick. To the extent the petitioner is asking this judge to recuse himself, pursuant to 28 U.S.C. § 144 and 455(a), the motion is DENIED as moot, as this case is closed.

IT IS SO ORDERED this 29 day of November, 2005.


JON PHIPPS McCALLA
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 15 in case 2:03-CV-02802 was distributed by fax, mail, or direct printing on November 30, 2005 to the parties listed.

Michael Joseph Kirkpatrick
FCI-MEMPHIS
20806-018
Federal Correctional Institute
P. O. Box 34550
Memphis, TN 38184--055

Honorable Jon McCalla
US DISTRICT COURT